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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. KENNETH WAYNE ALEXANDER, Defendant and Appellant.	B150093 (Los Angeles County Super. Ct. No. BA192533)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jaime L. Fuster, Supervising Deputy Attorney General, and Nora Genelin, Deputy Attorney General, for Plaintiff and Respondent.

Kenneth Alexander appeals from the judgment entered following his plea of guilty to possession of cocaine base for the purpose of sale and his admission of a prior conviction under the three strikes law. He contends that his motion to suppress evidence was improperly denied. We affirm.

BACKGROUND

At the suppression hearing, the prosecution presented evidence that at approximately 1:00 a.m. on September 16, 1999, Los Angeles Police Officer Mauricio Aranda received a radio call regarding the possible theft of a Toyota by three men at 317 East 84th Street. When Aranda and his partner arrived at the address they saw the Toyota in the driveway, which was being blocked by a Chevrolet van. Defendant and two other men were standing on the sidewalk near the driveway. With guns drawn, Aranda and his partner ordered the three to raise their hands. Defendant at first complied, but then took something out of his pants pocket and threw it aside. Aranda retrieved the object, which was a plastic baggie containing five or six rocks of cocaine.

Further investigation revealed that the van blocking the driveway was registered to defendant. The nearest parking place was over 50 feet away. Aranda decided to impound the van pursuant to Vehicle Code section 22651, subdivision (d), and directed that an inventory search be conducted.[1] Aranda did not ask either of defendant's companions to move the van, nor did Aranda do so himself, explaining that he wished to avoid any liability that might be incurred if he drove the van and damaged it. Aranda was aware that the police department had an "impound policy" but did not know its specifics. He testified that he frequently causes cars to be impounded, "usually . . . for moving violations, but I impound the car when it is impractical to move."

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[1] Vehicle Code section 22651 states in pertinent part: "Any peace officer . . . may remove a vehicle . . . under any of the following circumstances: [¶] . . . [¶] (d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway."

Officer Herman Frettlohr, who conducted the inventory search of the van, recovered two additional plastic baggies, each containing six to ten rocks of cocaine. Frettlohr explained that when a vehicle is impounded, an impound report form is completed and the property found in the vehicle is listed on the form.

Defendant, who did not present any evidence at the hearing, argued to the court that officers should not have impounded the car without first asking one of his companions to move the car away from the driveway. The trial court rejected defendant's position that "just because there are other people around and that were with the defendant, that the officer then has to give custody of the van to those people to move it." The court further commented: "The van was registered to the defendant. It was blocking the caller — the caller's driveway. The caller had reported that these individuals were trying to break into his property, he thought, to steal his Toyota. [¶] Also, Officer Aranda did testify, and there was nothing presented to refute that, that there was not nearby available parking. That's probably why they were stopped in the driveway in the first place, because there was no other place to stop that van on that particular street." Defendant's motion was denied.

DISCUSSION

"'"When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody [citation]; the protection of the police against claims or disputes over lost or stolen property [citation]; and the protection of the police from potential danger [citation]. The practice has been viewed as essential to respond to incidents of theft or vandalism. [Citations.]"'" (*People v. Benites* (1992) 9 Cal.App.4th 309, 322.)

In *Colorado v. Bertine* (1987) 479 U.S. 367, 375–376, the United States Supreme Court held that "[n]othing . . . prohibits the exercise of police discretion [in deciding to impound a vehicle] so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." We

reject the contention of defendant in this case that Officer Aranda did not apply standardized, objective criteria in exercising discretion to impound the van as required by *Bertine*.

As explained in *People v. Benites*, *supra*, 9 Cal.App.4th at pages 324–325: "This court [in *People v. Steeley* (1989) 210 Cal.App.3d 887] . . . noted that *Bertine*'s reference to the 'written directives' was in response to the dissent's contention that the procedures followed by the police were not based on standardized criteria: [¶] 'There is nothing in [*Bertine*'s] discussion from which it can be discerned that procedures for impoundment and inventory must be written. While written criteria may be evidence of standardization, the absence of written criteria would not mean the procedures were not standard. By the same token, unreasonable procedures do not ipso facto become standard, and therefore legal, merely because they are contained in a written directive.' [Citation.] Defendant did not challenge the officer's authority to impound the vehicle pursuant to Vehicle Code section 22651, subdivision [(d)], but this court [in *Steeley*] noted the fact that the statute 'gives the officer the discretion to decide whether to impound or to otherwise secure the vehicle does not mean that the procedure is unreasonable in Fourth Amendment terms. The fact that there may be less intrusive means of protecting a vehicle and its contents does not render the decision to impound unreasonable. [Citation.]" (Accord, *People v. Green* (1996) 46 Cal.App.4th 367, 374–375.)

Similarly, in the case at bench, defendant does not dispute Officer Aranda's authority to impound his van. The van was blocking a driveway, apparently of the very citizen who had called to report the suspicious activity of defendant and his cohorts. Defendant had already been found in possession of a quantity of rock cocaine, and logic would dictate that he not be given the opportunity to flee the scene by being permitted to move the van. Nor, other than for defendant's personal convenience, was any reason presented to obligate either of defendant's two companions to move the van. Finally, we can find no fault with the refusal of the police officers on the scene to assume the

responsibility for driving the van the more than 50 feet required to find a proper parking place.

Aranda testified that, as explicitly authorized by the Vehicle Code, it was his practice to impound a vehicle when it was impractical for him to move it. Aranda's application of this policy to the instant situation represents the type of standard criteria underlying a decision to impound that is independent of any suspicion of criminal activity, as required by *Bertine*. Accordingly, the inventory search ordered by Aranda and the resulting seizure of narcotics were proper. The trial court did not err in denying defendant's motion to suppress.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

SPENCER, P. J.

ORTEGA, J.